

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards)
)
) **Docket No. RM05-30-00**
)

**MOTION FOR CLARIFICATION AND, IN THE ALTERNATIVE, REHEARING BY
THE NEW YORK STATE RELIABILITY COUNCIL**

Pursuant to Rules 212 and 713 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.713 (2005), the New York State Reliability Council (“NYSRC”) seeks clarification of one aspect of the Commission’s Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards, 114 FERC ¶ 61,104 (2006) (“Order No. 672”), issued in the captioned proceeding on February 3, 2006 (“ERO Rules”). Specifically, the NYSRC requests that the Commission clarify that, when making a determination that a Commission approved function, rule, order, tariff, rate schedule or agreement should change because of a conflict with an electric reliability organization (“ERO”) reliability standard, the Commission’s order must be issued pursuant to section 206 of the Federal Power Act (“FPA”), 16 U.S.C. § 824e.

I. Statement of Issues

As discussed in detail below, the NYSRC seeks clarification or, in the alternative, rehearing of the following points:

1. Whether the Commission should clarify that under section 39.6 of the ERO Rules an order by the Commission to change a Commission approved function, rule, order,

tariff, rate schedule or agreement because of a conflict with an ERO reliability standard shall be issued pursuant to section 206 of the FPA, as required by section 215(d)(6) of the FPA.¹

2. Whether the Commission should grant rehearing to revise section 39.6 of the ERO Rules to conform that section to section 215(d)(6) of the FPA, which provides that an order by the Commission to change a Commission approved function, rule, order, tariff, rate schedule or agreement shall be made pursuant to section 206 of the FPA.

The NYSRC submits that the Commission should clarify or revise section 39.6 of the ERO Rules to ensure that its provisions conform to the provisions of section 215(d)(6) of the FPA.

II. The NYSRC

The NYSRC was approved by the Commission in 1999 as part of the comprehensive restructuring of the competitive wholesale electricity market in New York State.² Under the restructuring, the New York Power Pool (“NYPP”) was replaced by the New York Independent System Operator (“NYISO”) as the entity with the primary responsibility for the reliable operation of the State’s bulk power system. The NYISO also assumed responsibility for administration of the newly established competitive wholesale electricity markets.

The NYSRC was established to promote and preserve the reliability of the New York State power system by developing, maintaining, and, from time to time, updating the reliability rules (“Reliability Rules”) that govern the NYISO’s operation of the State’s bulk power system. The NYSRC develops Reliability Rules in accordance with standards, criteria and regulations of the North American Electric Reliability Council (“NERC”), the Northeast Power Coordinating

¹ 16 U.S.C. § 824o(d)(6).

² *Central Hudson Gas & Electric Corp.*, 83 FERC ¶ 61,352 (1998), *order on reh’g*, 87 FERC ¶ 61,135 (1999).

Council (“NPCC”), the Commission, the New York Public Service Commission (“PSC”) and the Nuclear Regulatory Commission.³ Under the recently enacted legislation, the NYSRC’s Reliability Rules would conform to ERO reliability standards approved by the Commission, as required by the NYSRC Agreement, and may be more specific or more stringent when necessary to meet the requirements of the State’s bulk power system. The Commission approved NYISO/NYSRC Agreement provides that the NYISO and all entities engaged in transactions on the New York State Power System must comply with the Reliability Rules adopted by the NYSRC.⁴

While the NYSRC Reliability Rules are based on NERC and NPCC reliability standards (and eventually on ERO reliability standards), they may be more specific or more stringent to meet the special requirements of the State’s bulk power system. These special requirements include the specific electric system characteristics and demographics of New York State, the complexities related to the maintenance of reliable transmission in New York State given the configuration of the State’s bulk power system, and the potential consequences that can result from power interruptions in New York City and Long Island.

III. Request For Clarification

The NYSRC fully supports the Commission’s implementation of the recently enacted Energy Policy Act’s⁵ provisions for the establishment of an ERO and the adoption of Commission approved reliability standards that are binding on transmission providers and users of the bulk power system. However, the NYSRC is concerned that the variance in the wording of section 215(d)(6) of the FPA and the wording of sections 39.6(b) and (c) of the ERO Rules,

³ NYISO/NYSRC Agreement, section 4.1, *available at* www.nyiso.com/public/documents/regulatory/agreements.jsp.

⁴ *Id.* at section 2.1, 3.1.

⁵ Pub. L. No. 109-58, 119 Stat. 594 (to be codified at 16 U.S.C. §§ 824, *et seq.*) (2005) (“Energy Policy Act”).

unless clarified, will result in confusion as to the statutory standard to be used by the Commission when making a determination that a Commission approved function, rule, order, tariff, rate schedule or agreement must be changed because of a conflict with an ERO reliability standard. Section 215(d)(6) reads as follows:

The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until-

(A) the Commission finds a conflict exists between a reliability standard and any such provision;

(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

Energy Policy Act at section 1211 adding FPA § 215(d)(6) (emphasis added).

Sections 39.6(b) and (c) of the ERO Rules, however, provide as follows:

(b) After notice and opportunity for hearing, within sixty (60) days of the date that a notice was filed under paragraph (a) of this section, unless the Commission orders otherwise, the Commission will issue an order determining whether a conflict exists and, if so, resolve the conflict by directing:

(1) the Transmission Organization to file a modification of the conflicting function, rule, order, tariff, rate schedule, or agreement pursuant to section 205 or section 206 of the Federal Power Act, as appropriate, or

(2) the Electric Reliability Organization to propose a modification to the conflicting Reliability Standard pursuant to § 39.5 of the Commission's regulations.

(c) The Transmission Organization shall continue to comply with the function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission until

the Commission finds that a conflict exists, the Commission orders a change to such provision pursuant to section 205 or 206 of the Federal Power Act, and the ordered change becomes effective.

ERO Rules, sections 39.6(b) and (c) (emphasis added).

The first paragraph of section 39.6(b) of the ERO Rules does not expressly state that the order issued by the Commission determining whether a conflict exists and, if so, directing how the conflict is to be resolved, must be made pursuant to section 206 of the FPA, as provided in section 215(d)(6) of the FPA. Further, sections 39.6(b)(1) and 39.6(c) make references to section 205 of the FPA, which do not appear in section 215(d)(6) of the FPA. The absence of an express statement that the Commission order referred to in the first paragraph of section 39.6(b) of the ERO Rules must be issued pursuant to section 206 of the FPA, and the references to section 205 of the FPA in section 39.6(b) and section 39.6(c) of the ERO Rules, unless clarified, will result in confusion with respect to the legal standard applicable to such a determination by the Commission. The NYSRC respectfully requests, therefore, that the Commission clarify that an order issued by the Commission under section 39.6 of the ERO Rules that a Commission approved function, rule, order, tariff, rate schedule, or agreement should be changed because of a conflict with an ERO reliability standard must be made “pursuant to section 206,” as required by section 215(d)(6) of the FPA.

IV. Alternative Request For Rehearing

If the Commission declines to grant the clarification requested herein, the NYSRC respectfully requests that the Commission grant rehearing, on the ground that sections 39.6(b) and (c) of the ERO Rules, as adopted on February 3, 2006, are inconsistent with the Energy Policy Act and section 215(d)(6) of the FPA, to the extent that they do not require that the Commission act pursuant to section 206 of the FPA when making a determination that a

Commission approved function, rule, order, tariff, rate schedule or agreement standard should be changed because it conflicts with an ERO reliability standard.

V. Conclusion

The NYSRC, therefore, respectfully requests that the Commission clarify sections 39.6(b) and (c) of the ERO Rules or, in the alternative, grant rehearing, as requested herein.

Respectfully submitted,

/s/ Bruce B. Ellsworth
Bruce B. Ellsworth
Chairman, Executive Committee
New York State Reliability Council
46 Tamarack Road
Hopkinton, NH 03229
Telephone: (603) 746-3447
Email: ellsworth@conknet.com

Dated: March 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this 6th day of March 2006.

/s/ Claire Brennan
Claire Brennan
Paralegal
LeBoeuf, Lamb, Greene & MacRae LLP
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009-5728
202-986-8000